

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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MARQUES PHILLIPS and CYNTHIA
M.PHILLIPS,

Plaintiffs,

v.

NO. CIV. S-04-0377 FCD PAN

ORDER

CITY OF FAIRFIELD, CHIEF OF
POLICE WILLIAM GRESHAM and
Does 1 through 10, MARK
SCHRAER, CHAD TIGERT and
STEVE TROJANOWSKI, JR., and
Does 11 through 20,

Defendants.

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This matter is before the court on motion by William C.
Collier ("Collier"), to withdraw as counsel for plaintiffs,
Marques Phillips and Cynthia Phillips (collectively "plaintiffs")
pursuant to Eastern District Local Rule 83-182(d). Plaintiffs
have filed letters with the court indicating that they oppose
withdrawal of Mr. Collier as their counsel. Defendants do not

1 oppose Mr. Collier's withdrawal, though they oppose any
2 continuance to permit plaintiffs to obtain new counsel.¹ The
3 court held a hearing on the motion to withdraw on April 15, 2005.
4 Present were Mr. Collier, plaintiff Cynthia Phillips, and counsel
5 for defendants. The court subsequently cleared the courtroom and
6 held an *in camera* hearing at which were present Mr. Collier and
7 Ms. Phillips and court personnel.

8 Eastern District Local Rule 83-182(d) provides that
9 "[withdrawal as attorney is governed by the Rules of Professional
10 Conduct of the State Bar of California, and the attorney shall
11 conform to the requirements of those Rules." E.D. Cal. Local
12 Rule 83-182(d). California Rule of Professional Conduct 3-700
13 provides in relevant part:

14 (C) Permissive Withdrawal.

15 If rule 3-700(B) is not applicable, a member may not
16 request permission to withdraw in matters pending
17 before a tribunal, and may not withdraw in other
18 matters, unless such request or such withdrawal is
19 because:

20 (1) The client

21 (a) insists upon presenting a claim or defense
22 that is not warranted under existing law and
23 cannot be supported by good faith argument for an
24 extension, modification, or reversal of existing
25 law, or

26 (b) seeks to pursue an illegal course of conduct,
27 or

28 (c) insists that the member pursue a course of
conduct that is illegal or that is prohibited
under these rules or the State Bar Act, or

(d) by other conduct renders it unreasonably
difficult for the member to carry out the
employment effectively, or

(e) insists, in a matter not pending before a
tribunal, that the member engage in conduct that
is contrary to the judgment and advice of the
member but not prohibited under these rules or the
State Bar Act, or

¹ Defendants have filed a motion for summary judgment
which is currently set for hearing on May 13, 2005.

(f) breaches an agreement or obligation to the member as to expenses or fees.
(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

. . .

(5) The client knowingly and freely assents to termination of the employment . . .

California Rule of Professional Conduct 3-700. The court finds that Mr. Collier should be permitted to withdraw as counsel for plaintiffs. His continued representation under the circumstances would be unreasonably difficult and does not appear to be in the best interest of plaintiffs.

Mr. Collier is directed to turn over plaintiffs' file promptly and in an orderly fashion. See Cal. Rule of Prof. Conduct 3-700(d).

In order to provide plaintiffs an opportunity to obtain substitute counsel, the court vacates all current dates, which were set by minute order on March 29, 2005. The court will hold a status conference on May 27, 2005 at 10:00 A.M. The hearing on defendants' motion for summary judgment is set for July 8, 2005 at 10:00 A.M. The Final Pretrial Conference is set for September 30, 2005 at 3:30 P.M. and Trial is set on November 29, 2005 at 9:00 A.M.²

IT IS SO ORDERED.

DATED: April 15, 2005

/s/ Frank C. Damrell Jr.
FRANK C. DAMRELL, Jr.
UNITED STATES DISTRICT JUDGE

² Should plaintiffs seek additional continuance, they or their counsel may move to amend the dates set herein pursuant to Fed. R. Civ. P. 16(b).